



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-R01-OAR-2020-0007; FRL-10498-01-R1]

Approval of the Clean Air Act, Section 112(l), Authority for Hazardous Air Pollutants: Air Emissions Standards for Halogenated Solvent Cleaning Machines; State of Rhode Island Department of Environmental Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to grant the Rhode Island Department of Environmental Management (RI DEM) the authority to implement and enforce the amended Rhode Island Code of Regulations, Control of Emissions from Organic Solvent Cleaning (Organic Solvent Cleaning Rule), and the General Definitions Regulation (General Definitions Rule) in place of the National Emission Standard for Halogenated Solvent Cleaning (Halogenated Solvent NESHAP) as a partial rule substitution as it applies to organic solvent cleaning machines in Rhode Island. Upon approval, RI DEM's amended Organic Solvent Cleaning Rule and General Definitions Rule would apply to all sources that otherwise would be regulated by the Halogenated Solvent NESHAP, except for continuous web cleaning machines, for which the Halogenated Solvent NESHAP would continue to apply. The EPA has reviewed RI DEM's request and has preliminarily determined that the State's amended Organic Solvent Cleaning Rule and General Definitions Rule satisfy the requirements necessary for approval. Thus, the EPA is proposing to approve the request. This approval would make RI DEM's amended Organic Solvent Cleaning Rule and General Definitions Rule federally enforceable. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2020-0007 at <https://www.regulations.gov>, or via email to bird.patrick@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square – Suite 100, Boston, MA. The EPA requests that, if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

FOR FURTHER INFORMATION CONTACT: Patrick Bird, Air Permits, Toxics, and Indoor Programs Branch, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square - Suite 100, (Mail code 05-2), Boston, MA 02109-3912, telephone number 617-918-1287, bird.patrick@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean the EPA.

Table of Contents

- I. Background and Purpose
- II. What Requirements Must a State Rule Meet to Substitute for a Section 112 Rule?
- III. What Material Changes did Rhode Island Make to its Organic Solvent Cleaning Rule and General Definitions Rule?
- IV. What is the EPA’s Evaluation Regarding Rhode Island’s Amended Organic Solvent Cleaning Rule and General Definitions Rule?
- V. Proposed Action
- VI. Incorporation by Reference
- VII. Statutory and Executive Order Reviews

I. Background and Purpose

Under CAA section 112(l), the EPA may approve state or local rules or programs to be implemented and enforced in place of certain otherwise applicable Federal rules, emissions standards, or requirements for hazardous air pollutants (HAPs). The Federal regulations governing the EPA’s approval of state and local rules or programs under section 112(l) are located at 40 CFR part 63, subpart E. *See* 58 FR 62262 (November 26, 1993), as amended by 65 FR 55810 (September 14, 2000). Under these regulations, a state air pollution control agency has the option to request the EPA’s approval to substitute a state rule for the applicable Federal rule (*e.g.*, the National Emission Standards for Hazardous Air Pollutants (NESHAP)). Upon approval by the EPA, the state agency is authorized to implement and enforce its rule in place of the Federal rule, and the state rule becomes federally enforceable in that state.

The EPA promulgated the National Emissions Standards for Halogenated Solvent Cleaning (“Halogenated Solvent NESHAP”) on December 2, 1994. *See* 40 CFR part 63, subpart T. The EPA promulgated several amendments to the Halogenated Solvent NESHAP, with the latest amendments promulgated on May 3, 2007. *See* 72 FR 25138.

On June 18, 2010, the EPA approved the Rhode Island Air Pollution Control Regulation No. 36, currently codified in Title 250 Department of Environmental Management, Chapter 120 Air Resources, Subchapter 05 Air Pollution Control, Part 36 Control of Emissions from Organic Solvent Cleaning (Organic Solvent Cleaning Rule), and Rhode Island Air Pollution Control

General Definitions Regulation, currently codified in Title 250 Department of Environmental Management, Chapter 120 Air Resources, Subchapter 05 Air Pollution Control, Part 0 General Definitions Regulation (General Definitions Rule), as a partial rule substitution for the Halogenated Solvent NESHAP, applicable to all sources in Rhode Island, except for continuous web cleaning machines,¹ for which the Halogenated Solvent NESHAP continues to apply. *See* 75 FR 34647.

Under 40 CFR 63.91(e)(2), within 90 days of any state amendment, repeal, or revision of any state rule approved as an alternative to a Federal requirement, the state must provide the EPA with a copy of the revised authorities and request approval of the revised rule. In a letter dated June 30, 2022, RI DEM requested approval of its amended rules pertaining to organic solvent cleaning in Rhode Island. Specifically, RI DEM requested approval of its amended rules in Title 250 Department of Environmental Management, Chapter 120 Air Resources, Subchapter 05 Air Pollution Control, Part 36 Control of Emissions from Organic Solvent Cleaning, effective June 13, 2022, excluding the provisions in Parts 36.2, 36.5.A.28, 36.6.D, and 36.17,² and in Title 250 Department of Environmental Management, Chapter 120 Air Resources, Subchapter 05 Air Pollution Control, Part 0 General Definitions Rule, effective January 4, 2022, excluding the provisions in Part 0.2.³ In this *Federal Register* document, the EPA is proposing to approve the amended Organic Solvent Cleaning Rule and General Definitions Rule under the rule substitution criteria in 40 CFR 63.93.

¹ The regulatory text promulgated in 40 CFR 63.99(a)(40)(ii) on June 10, 2010 specifies that the EPA's approval applies to area sources. However, Rhode Island did not request that the rule substitution be limited to area sources. In addition, nothing in the June 10, 2010 Federal Register preamble describes the rule substitution as being limited to area sources. We believe the rule substitution was intended to apply to both major and area sources and that the term area source is erroneously included in the regulatory text in § 63.99(a)(40)(ii). We therefore propose to remove the reference to area sources currently in 40 CFR 63.99(a)(40)(ii) by this rulemaking.

² The excluded provisions at Parts 36.A.5.28, 36.6.D, and 36.17 apply to industrial solvent cleaning not regulated by the Halogenated Solvent NESHAP. We are not proposing to approve these provisions.

³ The excluded provisions at Parts 36.2 and 0.2 state that the State's regulation shall be liberally construed to permit RI DEM to effectuate the purposes of state laws, goals and policies. We are not proposing to approve these provisions.

Rhode Island's Part 36 Organic Solvent Cleaning Rule was also submitted as a State Implementation Plan (SIP) revision for purposes of meeting reasonable available control technology (RACT) requirements for volatile organic compounds (VOCs). The EPA will take action on that submittal in a separate document.

II. What Requirements Must a State Rule Meet to Substitute for a Section 112 Rule?

A state must first demonstrate that it has satisfied the "up-front" criteria contained in 40 CFR 63.91(d). The process of providing "up-front approval" assures that a state has met the delegation criteria in section 112(l)(5) of the CAA as implemented by the EPA's regulations at 40 CFR 63.91(d). These criteria require, among other things, that the state has demonstrated that its program contains adequate authorities to assure compliance with each applicable Federal requirement, adequate resources for implementation, and an expeditious compliance schedule. Under 40 CFR 63.91(d)(3), interim or final Title V program approval under 40 CFR part 70 satisfies the criteria set forth in 40 CFR 63.91(d) for "up-front approval." On October 1, 2001, the EPA promulgated full approval of RI DEM's operating permits program. *See* 66 FR 49839. Accordingly, RI DEM has satisfied the up-front approval criteria of 40 CFR 63.91(d).

Additionally, the regulations governing approval of state requirements that substitute for a section 112 rule require the EPA to evaluate the state's submittal to ensure that it meets the stringency and other requirements of 40 CFR 63.93. A rule will be approved if the state requirements contain or demonstrate: (1) Applicability criteria that are no less stringent than the corresponding Federal rule; (2) levels of control and compliance and enforcement measures that result in emission reductions from each affected source that are no less stringent than would result from the otherwise applicable Federal rule; (3) a compliance schedule that requires each affected source to be in compliance within a time frame consistent with the deadlines established in the otherwise applicable Federal rule; and (4) the additional compliance and enforcement measures as specified in 40 CFR 63.93(b)(4). *See* 40 CFR 63.93(b).

A state may also seek, and the EPA may approve, a partial delegation of the EPA's authorities. CAA 112(l)(1). To obtain a partial rule substitution, the state's submittal must meet the otherwise applicable requirements in 40 CFR 63.93 and be separable from the portions of the program that the state is not seeking rule substitution for. *See* 64 FR 1889, January 12, 1999.

Before we can approve alternative requirements in place of a part 63 emissions standard, the state must submit to us detailed information that demonstrates how the alternative requirements compare with the otherwise applicable Federal standard. A detailed discussion of how the EPA determines equivalency for state alternative NESHAP requirements is provided in the preamble to the EPA's proposed subpart E amendments on January 12, 1999. *See* 64 FR 1908, January 12, 1999.

III. What Material Changes did Rhode Island Make to its Organic Solvent Cleaning Rule and General Definitions Rule?

Effective as of June 13, 2022,⁴ RI DEM amended Part 36 Control of Emissions from Organic Solvent Cleaning (amended Organic Solvent Cleaning Rule) and effective as of January 4, 2022, RI DEM amended Part 0 General Definitions Regulation (amended General Definitions Rule). The new State regulations differ in several ways from the regulations we last approved in 2010. *See* 75 FR 34647.

In 2016, the State of Rhode Island revised its Administrative Procedures Act to require that every state regulation be rewritten into the new Rhode Island Code of Regulations format. In order to meet this requirement, Part 0 General Definitions Rule and Part 36 Organic Solvent Cleaning Rule were revised consistent with the required format. Changes to the format included renumbering and lettering the provisions, moving the general provisions about purpose, authority, and severability from the end of the regulation to the beginning, and eliminating the table of contents. In addition, Rhode Island added an incorporated materials section to adopt and

⁴ Since the EPA's 2010 approval, Rhode Island amended Part 36 on January 9, 2017, and then subsequently on January 13, 2019 and June 13, 2022.

incorporate the Federal regulations cited within the rule. These revisions are not substantive, and they continue the State program we had previously approved, with the exceptions noted below. Our prior approval notice contains a detailed discussion of the differences between Rhode Island's Organic Solvent Cleaning Rule and the Halogenated Solvent NESHAP. *See* 75 FR 34647, June 18, 2010.

In addition to the recodification to the new format, Rhode Island also made several substantive changes to the Part 36 Organic Solvent Cleaning Rule. The following discussion summarizes the material changes to Rhode Island's amended Organic Solvent Cleaning Rule. A detailed side by side comparison table of Rhode Island's amended Organic Solvent Cleaning Rule compared to the Halogenated Solvent NESHAP is included in the docket identified in the **ADDRESSES** section of this *Federal Register* document *See* Enclosure 1 of Rhode Island's June 30, 2022 submission.

Rhode Island's amended Organic Solvent Cleaning Rule added an exemption from requirements for cold cleaning machines with an internal volume of 1 liter or less and not using halogenated HAP solvents as defined. *See* Rhode Island's Part 36.6.C. Because Rhode Island regulates cold cleaning machines with an internal volume of 1 liter or less if using halogenated HAP solvents as does the Halogenated Solvent NESHAP, Rhode Island's amended Organic Solvent Cleaning Rule is no less stringent than the Halogenated Solvent NESHAP. *See* 40 CFR 63.460(a).

Rhode Island's amended Organic Solvent Cleaning Rule changed the requirement for batch vapor machines without a solvent air interface to determine compliance with the three-month rolling emission limit on the 15th of every month. The Halogenated Solvent NESHAP requires these machines to determine compliance with the three-month rolling emission limit on the 1st of every month. Because the State's rule and the NESHAP require the same frequency of determining compliance (i.e., once every month), Rhode Island's amended Organic Solvent

Cleaning rule is not less stringent than the Halogenated Solvent NESHAP. *See* Rhode Island's Part 36.12.A.3 and 40 CFR 63.464 and 63.465(c).

Rhode Island's Organic Solvent Cleaning Rule includes solvent vapor pressure limits for certain cold cleaning operations. Rhode Island's amended Organic Solvent Cleaning Rule clarified the provisions for cold cleaning machines excluded from the solvent vapor pressure limits. The Halogenated Solvent NESHAP does not set vapor pressure limits for solvents. Because Rhode Island's rule amended Organic Solvent Cleaning rule imposes limits beyond what the NESHAP requires, it is not less stringent than the Halogenated Solvent NESHAP. *See* Rhode Island's Part 36.9.G.

Rhode Island's Organic Solvent Cleaning Rule includes a monthly halogenated HAP solvent emission limit for all organic solvent cleaning operations, calculated on a 12-month rolling average basis. Rhode Island's amended Organic Solvent Cleaning Rule added explicit compliance dates for sources complying with the monthly halogenated HAP solvent emission limit. *See* Rhode Island's Parts 36.8.Q and 36.7.B. Rhode Island's monthly halogenated HAP solvent emission limit compliance dates are consistent with the Halogenated Solvent NESHAP. *See* 40 CFR 63.460(i).

Rhode Island removed the specific dates for approval of alternatives for machines installed before November 29, 1993 because those dates have passed. Rhode Island's amended Organic Solvent Cleaning Rule requires alternatives to be submitted and approved by EPA and RI DEM before startup of the machine. Rhode Island's amended Organic Solvent Cleaning Rule is equivalent to the Halogenated Solvent NESHAP. *See* Rhode Island's Parts 36.9.C.2, 36.10.F.5, 36.10.G.3, 36.11.H.3, and 36.11.G.4 and 40 CFR 63.469.

Rhode Island removed the provision requiring requests to be submitted by December 1, 1996, for exemptions from automated parts handling for machines installed before November 29, 1993, because the deadline has passed for sources to request an exemption from parts handling for machines installed before November 29, 1993. Rhode Island's amended Organic Solvent

Cleaning Rule requires requests for exemption from parts handling to be submitted 30 days before startup of the solvent cleaning machine. The Halogenated Solvent NESHAP does not have an analogous requirement for sources to request using the alternative emission limitation as an alternative to the control technology standards. Both the Halogenated Solvent NESHAP and Rhode Island's rule require sources complying with the alternative emission standard to report solvent emissions averages. Because Rhode Island's amended Organic Solvent Cleaning Rule imposes this request requirement that the NESHAP does not require, it is not less stringent than and is consistent with the Halogenated Solvent NESHAP. *See* Rhode Island's Part 36.16 and 40 CFR 63.464.

Rhode Island removed initial notification and compliance notification reporting dates for sources installed before November 29, 1993, because those reporting deadlines have passed. Rhode Island's amended Organic Solvent Cleaning Rule requires sources to submit an initial notification 120 days before startup and a compliance notification report 60 days after startup. The Halogenated Solvent NESHAP requires the initial notification for new sources to be submitted as soon as practicable before construction or reconstruction is commenced and requires the initial statement of compliance report to be submitted no later than 150 days after startup. Because RI's amended Organic Solvent Cleaning Rule requires a more expeditious notification and reporting schedule than the NESHAP, it is not less stringent than and is consistent with the Halogenated Solvent NESHAP. *See* Rhode Island's Parts 36.15.1.A and 36.15.2.A and 40 CFR 63.468(b)-(e).

Rhode Island amended and added definitions in order to be consistent with the NESHAP, including definitions for air blanket, consumption, contaminants, cover, halogenated HAP solvent, hoist, overall control device efficiency, part, soil, solvent/air interface area, sump heater, sump heater coils, and vapor cleaning. Because Rhode Island's definitions are equivalent to those in the NESHAP, Rhode Island's rule is no less stringent than the NESHAP. *See* Rhode Island's Part 36.5 and 40 CFR 63.461.

IV. What is the EPA's Evaluation Regarding Rhode Island's Amended Organic Solvent Cleaning Rule and General Definitions Rule?

After reviewing the request for approval of Rhode Island's amended Organic Solvent Cleaning Rule and General Definitions Rule, the EPA proposes to find that this request meets all of the requirements necessary to qualify for a partial rule substitution approval under CAA section 112(l) and 40 CFR 63.93. Specifically, we believe that the amended State program generally continues the program we approved in 2010, with the exceptions described in this document. We thus incorporate the findings we made in our 2010 approval notification. *See* 75 FR 34650, June 18, 2010. The amendments to the program since then are generally non-substantive changes to conform the State's regulations to its recently revised Administrative Procedures Act. We have scrutinized the several substantive changes as described above and find that these do not unfavorably affect the stringency of the State's program or its consistency with the NESHAP. We thus propose to find that Rhode Island's amended Organic Solvent Cleaning Rule and General Definitions Rule meet all the criteria for our approval in 40 CFR 63.93(b): the State's program is not less stringent than the Halogenated Solvent NESHAP as required by each of the criteria set forth in 40 CFR 63.93(b)(1)-(2), is consistent with the compliance schedule in the NESHAP as required by 40 CFR 63.93(b)(3), and satisfies the compliance and enforcement requirements in 40 CFR 63.93(b)(4). We make these findings for the State's program as applied to all sources in Rhode Island otherwise regulated by the Halogenated Solvent NESHAP, except for continuous web cleaning machines for which the Halogenated Solvent NESHAP would continue to apply. Therefore, the EPA proposes to approve Rhode Island's amended Organic Solvent Cleaning Rule, effective as of June 13, 2022, and Rhode Island's General Definitions Rule, effective as of January 4, 2022, in lieu of the Halogenated Solvent NESHAP, for all sources in Rhode Island, except for continuous web cleaning machines.

V. Proposed Action

EPA is proposing to approve RI DEM's amended rules in Title 250 Department of Environmental Management, Chapter 120 Air Resources, Subchapter 05 Air Pollution Control, Part 36 Control of Emissions from Organic Solvent Cleaning, effective as of June 13, 2022, excluding the provisions in Parts 36.2, 36.5.A.28, 36.6.D, and 36.17, and in Title 250 Department of Environmental Management, Chapter 120 Air Resources, Subchapter 05 Air Pollution Control, Part 0 General Definitions Regulation, effective as of January 4, 2022, excluding the provisions in Part 0.2, as a partial rule substitution for the Halogenated Solvent NESHAP, for all sources in Rhode Island, except for continuous web cleaning machines. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before the EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this *Federal Register* document.

VI. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference Rhode Island's rules in Title 250 Department of Environmental Management, Chapter 120 Air Resources, Subchapter 05 Air Pollution Control, Part 36 Control of Emissions from Organic Solvent Cleaning, effective as of June 13, 2022, excluding the provisions in Parts 36.2, 36.5.A.28, 36.6.D, 36.17, and in Title 250 Department of Environmental Management, Chapter 120 Air Resources, Subchapter 05 Air Pollution Control, Part 0 General Definitions Regulation, effective as of January 4, 2022, excluding the provisions in Part 0.2. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator has the authority to approve CAA section 112(l) submissions that comply with the provisions of the Act and applicable Federal regulations. In reviewing section 112(l) submissions, the EPA's role is to approve state choices, provided that they meet the criteria and objectives of the CAA and of the EPA's implementing regulations. Accordingly, this action proposes to approve the State's request as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001).

In addition, this rule is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA. It also does not provide EPA with the

discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994) because the EPA is proposing to approve the State's request as meeting Federal requirements and is not imposing additional requirements beyond those imposed by State law. This rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the EPA is not proposing to approve the submitted rule to apply in Indian country located in the State, and because the submitted rule will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 15, 2022.

David Cash,
Regional Administrator,
EPA Region 1.

[FR Doc. 2022-27765 Filed: 12/21/2022 8:45 am; Publication Date: 12/22/2022]